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# THE AMERICAN LAW REGISTER

FOUNDED 1852.

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UNIVERSITY OF PENNSYLVANIA

DEPARTMENT OF LAW

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SUBSCRIPTION PRICE, \$3.00 PER ANNUM. SINGLE COPIES, 35 CENTS.

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Edited by members of the Department of Law of the University of Pennsylvania under the supervision of the Faculty, and published monthly for the Department by OTTO KRAUS, JR., Business Manager, at S. W. Cor. Thirty-fourth and Chestnut Streets, Philadelphia, Pa. Address all literary communications to the PRESIDENT-EDITOR; all business communications to the BUSINESS MANAGER.

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## BOOK REVIEWS.

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PRACTICE IN CIVIL ACTIONS AND PROCEEDINGS IN THE LAW COURTS OF THE STATE OF DELAWARE. By VICTOR B. WOOLEY. In two volumes. Star Printing Co., Wilmington, Del.

As the years roll on the tides of time bear on their surface all sorts and kinds of printed craft. Many are weak and under the stress of criticism, or from deadly neglect, become wrecks, and either sink into the waters of oblivion, or as sodden and worthless flotsam and jetsam are cast on the shore of the sea of knowledge, to be destroyed. Others are strong and valuable, and make long and repeated cruises

carrying their freight of thought and learning to successive generations of readers.

It is strange that with the ever enlarging cumulative evidence of the contagion of the *cacoethes scribendi*, such a subject as that of the above title has not been seized and exploited long ago. Mr. Wooley's excellent treatise is the only one on Delaware Practice since the creation of the Provincial Court in 1684.

The author is to be congratulated as the first who has written, for the benefit of his profession, a useful and needed book; and also written it well. It has been no light task to define and simplify and express the Legal Procedure of his State.

There is a wide field for research in the history of Actions, and for the development of ingenious conceptions, and for theses upon substantive rights; in proof of which the ability and learning of Pollock, Hare, Ames, and other legal scholars may be cited. While Mr. Wooley shows his capacity for this aspect of his subject, he has not devoted his pages to theories, but has made his statements of Practice practical.

To the lawyer who resides in another Commonwealth, two thoughts are suggested by even a cursory perusal of these volumes. The first is that the reasonable celerity with which suits ought to be pressed, is prevented in Delaware by the paucity of terms of Court, and hence of return-days of process. In New Castle County there are four regular terms per year, and in Kent and Sussex Counties, respectively, only two terms; and writs are made returnable to the first day of the next term after issue. Contrasted with Pennsylvania, especially where, as in Philadelphia, optional return-days have been added, under statutory authorization (making four in every month), this tardy conduct of the beginning of a suit may seem antiquated, and in some instances even like a denial of justice.

The second thought—and a very different one from that just mentioned—is that those concerned in the administration of the law of Delaware have escaped that legislation, in bulk or in disjointed fragments, by which established procedure has been obscured or obliterated in some other States. Happily in the jurisdiction described in this book men with a genius for drawing Acts of Assembly have not been largely, strenuously, and continuously in evidence.

Now knowledge of Practice is important; the obligation to conform to legal requirements, either of the common or statutory law, is the every day thought of all attorneys in active business. Even a judgment by confession or by default must be regularly entered, and for accuracy in such

cases Mr. Wooley gives full directions. If, however, there be a contested suit, it is carried on not by a guerilla warfare, but the attack and the defence are conducted on systematic lines. Hence instruction is provided for each step in the progress of the cause. Beginning with the Courts and their several jurisdictions we find succinct but comprehensive paragraphs and sentences through the whole course of litigation to judgment and writ of error. Forms (which are so helpful to the neophyte and even to the older lawyer) are found in appropriate places, not bunched in an appendix. The true notion of the merits of this *vade mecum* can be gained only by reading it, but the following is a further brief notice of its contents.

The division of topics is natural and logical. Thus in successive chapters are found these:—Parties to Actions, Joinder of Parties and Actions, Commencement of Actions, Proceedings between Return and Pleading; and then follow five chapters on the Pleadings, and the closing subjects of the first volume include Proceedings between Issue and Trial, (Trial by Jury, Court, Referees), Judgments and Proceedings in Error. The second volume is given to Executions and to separate treatment of the different forms of action in force in Delaware. This orderly arrangement is made possible by the retention with wise modification of the Common Law Procedure.

The changes that may be noticed do not injure the symmetry of the old Practice, but are beneficial. Some of these relate to the adoption of the affidavit of defence law of Pennsylvania, the Statutes on Mechanics Liens, (which are not too intricate for the ordinary legal mind to grasp), Interpleaders, opening Judgments, Issues from the Registers of Wills,—but there is not room in a review to name them all. On the whole there are fewer departures from the common-law than in any other of the States of the Union.

C. J. Mitchell has said (See "Hints on Practice in Appeals" 52 AM. LAW REGISTER, p. 338), that Practice "is a mass of particulars"—and again that it "involves two things,—first what to do, and secondly, how to do it." Hence it means laborious thought and attention to minute details. Mr. Wooley has bestowed great labor on this pioneer book. His citations of decisions and statutes are ample but not burdensome. His style is clear, and since (as he states in the Preface), "A large portion of the practice of the law courts in the State of Delaware is unwritten law," his work may well be called original. The book is valuable not only to "student and practitioner," but to the non-resident lawyer who is interested in comparative procedure, and it is evidently

the product of extensive practical experience, much care and study, and of general legal ability. *J. W. P.*

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TRIAL TACTICS. By ANDREW J. HIRSCHL of the Chicago Bar. Chicago: T. H. Flood & Co. 1906. Pp. vii., 264.

The author of this book does not pretend to furnish a specific insuring success in litigation to the practitioner. His purpose is to give to the young lawyer practical suggestions as to the skilful conduct of a lawsuit,—suggestions resulting from experience rather than from familiarity with legal principles. Mr. Hirschl has had a varied and active practice of nearly thirty years and from this personal experience he has no doubt discovered effective ways of meeting the problems of the advocate. Books of this kind will always attract the young lawyer, and besides proving of practical value will furnish interesting reading.

The chapters cover the various steps of litigation, and in addition to discussing methods of handling the situations which necessarily arise in the normal case, include suggestions of various strategic moves which in many instances would no doubt prove advantageous.

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THE LEGISLATIVE HISTORY OF NATURALIZATION IN THE UNITED STATES. From the Revolutionary War to 1861. By FRANK GEORGE FRANKLIN, Ph.D., Professor of History and Political Science in the University of the Pacific. The University of Chicago Press, Chicago. 1906. Pp. ix, 308.

For obvious reasons the subject of naturalization assumes unusual importance in the United States, and it is in recognition of this fact that this volume is offered to the public. The various naturalization acts are traced through Congress and their general purport and purpose succinctly stated. The beginnings of the opposition to immigration are outlined and the cause of such opposition examined. The book presents a readable and valuable summary of the facts in this connection. It is a satisfactory study of the course of opinion on the subject of naturalization as manifested in the discussion, reports and legislation at the central forum of American political life—the professed purpose of the author.